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In the Supreme Court of the United States

October Term, 1954

No. 94

United States of America, Ante Perovic, Cuka,
Petitioners,

v.

Federal Communications Commission

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Reply Brief for Petitioners

INDEX

Argument:

	Page
I. The rules do not contravene Section 309(b)	2
II. The rules are reasonable	11
III. The Commission complied with the Administrative Procedure Act	17

CITATIONS

Cases:

Aladdin Radio and Television, Inc., 9 Pike & Fischer, Radio Regulation 1	16
American Trucking Assns. v. *United States*, 344 U.S. 298	4, 18
Ashbacker Radio Corp. v. *Federal Communications Commission*, 326 U.S. 327	3
Churchill Tabernacle v. *Federal Communications Commission*, 160 F. 2d 244	8
City of New York Municipal Broadcasting System v. *Federal Communications Commission*, 223 F. 2d 637	4
Columbia Broadcasting System v. *United States*, 316 U.S. 407	5
Federal Communications Commission v. *American Broadcasting Co.*, 347 U.S. 284	8
Federal Communications Commission v. *Sanders Brothers Radio Station*, 309 U.S. 470	3
Felman v. *United States*, N.D. Ill. (not reported), affirmed *per curiam*, 339 U.S. 973	7
Logansport Broadcasting Corp. v. *United States*, 210 F. 2d 24	8
Mansfield Journal Co. v. *Federal Communications Commission*, 180 F. 2d 28	14
National Broadcasting Co. v. *United States*, 319 U.S. 190	5, 6, 13, 14
Storer Broadcasting Co., 9 Pike & Fischer, Radio Regulation 1363	15
Thomas S. Lee Enterprises, Inc., 5 Pike & Fischer, Radio Regulation 1179	7

Cases—Continued

	Page
Transamerica Corp. v. Board of Governors of Federal Reserve System, 206 F. 2d 163	13
United States v. *Columbia Steel Co.*, 334 U.S. 495	13
United States v. *Sears, Roebuck & Co.*, 111 F. Supp. 614	15

Statutes:

	Page
Administrative Procedure Act, Section 4(b), 5 U.S.C. 1003(b)	17, 18
Clayton Act, Section 8, 38 Stat. 733, as amended, 15 U.S.C. 19	15
Communications Act of 1934, as amended, 48 Stat. 1064, 50 Stat. 191, 66 Stat. 715, 47 U.S.C. 151, *et seq.*:	
Section 4(i)	4
Section 301	8
Section 303	4
Section 303(b)	5
Section 303(c)	5
Section 303(f)	4, 18
Section 303(r)	4
Section 307(b)	9
Section 309(b)	4, 11
Section 402(b)	3
Davis Amendment, 45 Stat. 373, repealed 49 Stat. 1475	9
18 U.S.C. 1304	8

Miscellaneous:

	Page
Federal Communications Commission 21st Annual Report	14
Federal Communications Commission Report on Chain Broadcasting (Docket No. 5060, May 1941)	12
Federal Communications Commission Rules and Regulations, 47 C.F.R.:	
Section 1.72 (6 F.R. 2656)	6

Miscellaneous—Continued

	Page
Section 1.81 (6 F.R. 2656)	6
Section 1.724	3
Section 3.139	8
Section 3.241	8
Section 3.607	9
Section 3.659	8
19 F. R. 6099	17
20 F. R. 9041, 9059	8
H. Report No. 2589, 74th Cong., 2d Sess.	9
H. Report No. 1750, 82d Cong., 2d Sess.	9
H. Report No. 2426, 82nd Cong., 2d Sess.	9
Hearings Before Senate Committee on Interstate and Foreign Commerce on S. 814, 78th Cong., 1st Sess.	10
Hearings before subcommittee of Senate Committee on Interstate and Foreign Commerce, on S. 1333, 80th Cong., 1st Sess.	10
S. Report No. 1588, 74th Cong., 2d Sess.	9
S. 1333, 80th Cong., 1st Sess.	10
S. Report No. 1567, 80th Cong., 2d Sess.	10
S. Report No. 741, 81st Cong., 1st Sess.	9
Television Network Regulation and the UHF Problem, a memorandum prepared for the Senate Committee on Interstate and Foreign Commerce by Harry M. Plotkin, special Counsel, 84th Cong., 1st Sess.	17

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 94

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION, PETITIONERS

v.

STORER BROADCASTING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE UNITED STATES AND THE FEDERAL COMMUNICATIONS COMMISSION

The authority of the Federal Communications Commission to adopt general regulations which set standards related to the "public interest" and to deny applications which fail to meet these standards is not a matter of first impression in this Court. In our opening brief, we discussed the decisions which sustain this power. We pointed out that the decision below was inconsistent with decisions of this Court, and, indeed, of the court of

sions in adjudicatory proceedings in an attempt to establish that the Commission erroneously failed to make findings of fact.

The Administrative Procedure Act does not require that rule-making be predicated upon a hearing and findings of fact unless the agency is required by other statute to proceed on that basis. Section 4(b); *American Trucking Assns* v. *United States*, 344 U.S. 298, 318-320. There is no such statutory requirement applicable here.[23]

So far as Section 4(b) is concerned, it is abundantly plain that the Commission's report more than satisfies the requirement that there be a general statement of the basis and purpose of the rules.

[23] The only instances of such a requirement in the Communications Act are that changes in frequency or authorized power of a station, or in the times of operation, even if accomplished by a rule change, shall not be made unless the licensee consents or after a public hearing. Communications Act, Section 303(f), 47 U.S.C. 303(f).

The Report not only discusses the policy considerations underlying the rules and the statutory authority for adopting them, but also thoroughly reviews the comments submitted to the Commission and the reasons for accepting or rejecting alternative proposals. See opening brief, pages 39-42.

Respectfully submitted,

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